



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 161 0207]**

**Alimentation Couche-Tard Inc. and CST Brands, Inc.; Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before July 26, 2017.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: “In the Matter of Alimentation Couche-Tard Inc., File No. 161-0207” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/act-cstconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “In the Matter of Alimentation Couche-Tard Inc., File No. 161-0207” on your comment and on the envelope, and mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address:

Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Bush (202-326-2848), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 26, 2017), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 26, 2017. Write “In the Matter of Alimentation Couche-Tard Inc., File No. 161-0207” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/act-cstconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “In the Matter of Alimentation Couche-Tard Inc., File No. 161-0207” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC. 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c).

In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 26, 2017. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

## **Analysis of Agreement Containing Consent Orders to Aid Public Comment**

### **I. Introduction**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Alimentation Couche-Tard Inc. (“ACT”) and CST Brands, Inc. (“CST”) (collectively, the “Respondents”). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from ACT’s proposed acquisition of CST.

Under the terms of the proposed Consent Agreement, ACT must divest to a Commission-approved buyer certain CST retail fuel outlets and related assets in 70 local markets in 16

metropolitan statistical areas (“MSAs”), and at the buyer’s option, an ACT site in one local market. The divestiture must be completed no later than 75 days after the closing of ACT’s acquisition of CST or 14 days after the Consent Agreement is issued as final. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the Commission-approved buyer acquires the outlet.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

## **II. The Respondents**

Respondent ACT, a publicly traded company headquartered in Laval, Quebec, Canada, operates convenience stores and retail fuel outlets throughout the United States and the world. ACT’s current U.S. network consists of over 6,050 stores located in 41 states. Nearly 4,700 locations are company-operated, making ACT the largest convenience store operator in terms of company-owned stores and the second-largest chain overall in the country. Approximately 88 percent of ACT’s company-operated locations also sell fuel. ACT convenience store locations operate primarily under the Circle K and Kangaroo Express banners, while its retail fuel outlets operate under a variety of company and third-party brands.

Respondent CST operates convenience stores and retail fuel outlets in the United States and Canada. With 1,146 convenience stores and retail fuel outlets in the United States, CST is one of the largest chains in the country. CST’s U.S. convenience stores operate primarily under

the Corner Store banner, while its retail fuel outlets operate primarily under the Valero brand. CST also is the general partner and operator of CrossAmerica Partners LP, a publicly traded master limited partnership that offers wholesale fuels marketing, and owns and operates convenience stores and retail fuel outlets.

### **III. The Proposed Acquisition**

On August 21, 2016, ACT, through its wholly-owned subsidiary Circle K Stores, Inc., entered into an agreement to acquire all outstanding shares of CST for \$4.4 billion, with CST surviving post-acquisition as a wholly-owned subsidiary of Circle K Stores, Inc. (the “Transaction”). The Transaction would cement ACT’s position as one of the largest operators of retail fuel outlets in the United States.

The Commission’s Complaint alleges that the Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the retail sale of gasoline and diesel in 71 local markets across 16 MSAs.

### **IV. The Retail Sale of Gasoline and Diesel**

The Commission’s Complaint alleges that relevant product markets in which to analyze the Transaction are the retail sale of gasoline and the retail sale of diesel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Likewise, consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. The retail sale of gasoline and the retail sale of diesel constitute separate relevant markets because the two are not interchangeable – vehicles that run on gasoline cannot run on diesel and vehicles that run on diesel cannot run on gasoline.

The Commission's Complaint alleges the relevant geographic markets in which to assess the competitive effects of the Transaction are 71 local markets within the following MSAs: Phoenix, Arizona; El Paso, Texas; Tucson, Arizona; Colorado Springs, Colorado; Denver, Colorado; Jacksonville, Florida; Albuquerque, New Mexico; Corpus Christi, Texas; Austin, Texas; Shreveport, Louisiana; Albany, Georgia; Cleveland, Ohio; Las Cruces, New Mexico; Savannah, Georgia; Sierra Vista, Arizona; and Warner Robins, Georgia.

The geographic markets for the retail sale of gasoline are highly localized, generally ranging from a few blocks to a few miles. None of the relevant geographic markets exceeds three driving miles from an overlapping retail fuel outlet. Fueling up on gasoline is rarely a destination trip for a consumer and therefore consumers are likely to frequent retail fuel outlets close to their planned routes. Each particular geographic market is unique, with factors such as commuting patterns, traffic flows, and outlet characteristics playing important roles in determining the scope of the geographic market. The geographic markets for the retail sale of diesel are similar to the corresponding geographic markets for retail gasoline as diesel consumers exhibit the same preferences and behaviors as gasoline consumers.

The Transaction would substantially increase the market concentration in each of the 71 local markets, resulting in highly concentrated markets. In ten local markets, the Transaction would result in a monopoly. In 20 local markets, the Transaction would reduce the number of independent market participants from three to two. In 41 local markets, the Transaction would reduce the number of independent market participants from four to three.

The Transaction would substantially lessen competition for the retail sale of gasoline and the retail sale of diesel in these local markets. Retail fuel outlets compete on price, store format,

product offerings, and location, and pay close attention to competitors in close proximity, on similar traffic flows, and with similar store characteristics. The combined entity would be able to raise prices unilaterally in markets where CST is ACT's only or closest competitor. Absent the Transaction, CST and ACT would continue to compete head to head in these local markets.

Moreover, the Transaction would increase the likelihood of coordination in local markets where only three or two independent market participants would remain. Two aspects of the retail fuel industry make it vulnerable to coordination. First, retail fuel outlets post their fuel prices on price signs that are visible from the street, allowing competitors to observe each other's fuel prices without difficulty. Second, retail fuel outlets regularly track their competitors' fuel prices and change their own prices in response. These repeated interactions give retail fuel outlets familiarity with how their competitors price and how their competitors respond to their own prices.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

## **V. The Proposed Consent Agreement**

The proposed Consent Agreement remedies the Transaction's anticompetitive effects by requiring ACT to divest certain CST retail fuel outlets and related assets in 70 local markets, and an ACT site in one local market at the buyer's option, to Empire Petroleum Partners ("Empire"). Empire is a retail operator and wholesale fuel distributor doing business in 26 states; its

executive team has decades of experience with some of the industry's largest players. The Commission is satisfied that Empire is a qualified acquirer of the divested assets.

The proposed Consent Agreement requires ACT to divest to Empire CST's retail fuel outlets in 70 local markets. In the remaining local market, located in Albany, Georgia, the ACT outlet was damaged by a tornado in early 2017. To remedy potential competitive concerns in this local market, the Consent Agreement requires ACT to give Empire the option of acquiring the overlapping ACT site. If Empire declines the option, the Consent Agreement prohibits ACT, for ten years, from restricting the use of the property as a retail fuel outlet in any future sale. The proposed Consent Agreement requires ACT to divest the assets to Empire no later than 75 days after the Transaction closes or 14 days after the Commission issues the Consent Agreement as final.

The proposed Consent Agreement also requires that ACT provide transitional assistance to Empire for one year, with an option for Empire to extend the period for an additional year. Empire may extend the period for a third year, but only with Commission approval. ACT and Empire have entered into a Transition Services Agreement, whereby ACT has agreed to allow Empire to continue using the CST brand names and the store-specific licenses and permits during the transitional assistance period. In addition, ACT has agreed to provide temporary wholesale fuel supply to Empire on the same terms CST was receiving, giving Empire time to negotiate its own wholesale supply contracts.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires ACT to provide the Commission notice, for a period of ten years, of certain acquisitions in the 71 local markets at issue. Specifically, the Consent Agreement requires ACT to give the

Commission notice of future acquisitions of Commission-identified retail fuel outlets located in the same local markets as the divested assets.

The proposed Consent Agreement contains additional provisions designed to ensure the adequacy of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will be issued at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business, through the date the store is ultimately divested to a buyer. During this period, and until such time as Empire no longer requires transitional assistance, the Order the Maintain Assets authorizes the Commission to appoint an independent third party as a Monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark  
Secretary.

[FR Doc. 2017-13912 Filed: 6/30/2017 8:45 am; Publication Date: 7/3/2017]